

The Honorable David G. Estudillo

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff

v.

JOAO RICARDO DEBORBA,

Defendant.

NO. CR22-5139-DGE

UNOPPOSED MOTION FOR
EXTENSION OF TIME

Noting date: 9/1/23

The United States moves for an order extending the time for filing briefs in relation to Defendant's Motion to Dismiss the Indictment (docket number 36). The government requests that: Defendant's motion be re-noted for September 29, 2023, and the government's opposition be due September 22, 2023.

This motion to extend time is based on the attached Declaration of Max B. Shiner.

DATED this 1st day of September, 2023.

Respectfully submitted,

TESSA M. GORMAN
Acting United States Attorney

/s/ Max B. Shiner

MAX B. SHINER
Assistant United States Attorney

DECLARATION

I, Max B. Shiner, declare as follows:

1. I am a duly appointed Assistant United States Attorney for the Western District of Washington, and I have primary responsibility for representing the interests of the United States in this matter.

2. I make this declaration in support of the government's motion for extension of time to file the opposition brief in relation to Defendant's Motion to Dismiss the Indictment (docket number 36) ("the Motion").

3. The Motion was filed on August 29, 2023. Concurrently with the Motion, defendant sought and received leave of the Court to file an overlength brief.

4. The brief in support of the Motion is 47 pages. Defendant argues that the federal firearms statutes (18 U.S.C. § 922(g)(5) and (g)(8)) violate the Second Amendment both facially and as applied to defendant, and that the remaining counts of the indictment must be dismissed for reasons attendant to those claims. The Motion relies largely on the United States Supreme Court's opinion in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (2022). The Motion makes arguments regarding the text of the Second Amendment, the application of *Bruen* to the statutes at issue here, and the historical tradition of gun regulation in the United States.

5. The issues raised in the lengthy Motion will require a detailed response brief. The claims in the Motion have not been addressed by the Ninth Circuit, though there have been a number of District Court decisions, including some that are in conflict. With respect to 18 U.S.C. § 922(g)(8) in particular, District Courts have disagreed on whether *Bruen* renders section 922(g)(8) invalid and the issue is presently before the Supreme Court (*see United States v. Rahimi*, 61 F.4th 443, 455 (5th Cir.), cert. granted, 143 S. Ct. 2688 (2023)).

6. I am lead counsel on this matter, which is set for trial on October 10, 2023, As such, I will be personally drafting the government's response to the Motion. In

1 addition to my duties as lead counsel on this case, I am handling a number of trial matters
2 and pre-indictment investigations that require a substantial amount of my time and
3 attention. Among other matters, I currently have five sentencing hearings scheduled
4 between today and the trial date, and I am assigned as co-lead counsel on a 27-defendant
5 pending trial matter in *United States v. Bailey, et al*, CR23-5085-DGE, which regularly
6 requires substantial amounts of my time and attention to respond to motions, engage in
7 discussions with defense counsel, respond to discovery requests, and attend to other
8 matters. In addition, I am lead counsel on a number of pre-indictment matters that are not
9 public to which I devote a major portion of my time. As a consequence, the time I can
10 devote to the response brief is greatly limited.

11 7. From my preliminary review of the Motion and the case law, I believe time
12 required to adequately respond to the Motion will far exceed the one week provided by
13 the Local Criminal Rules. Because of this, I do not believe I will have the time to
14 adequately research and respond to the issues presented by the Motion by September 5,
15 2023, the current due date.

16 8. Moreover, I believe an adequate and helpful response brief will require
17 several weeks to draft, as it will involve reading a substantial number of District Court
18 and Circuit opinions from across the nation. The case law on the issues presented by the
19 Motion is developing and some of the issues presented by the motion appear to be ones
20 for which there is no binding authority in this Circuit.

21 9. I request that Defendant's motion be re-noted for October 29, 2023, the due
22 date for the government's opposition be extended to October 22, 2023.

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Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 1st day of September, 2023.

MAX B. SHINER

Assistant United States Attorney

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[PROPOSED] ORDER

IT IS HEREBY ORDERED:

Defendant's Motion to Dismiss the Indictment (docket number 36) is re-noted for
September 29, 2023.

The government's opposition is due September 22, 2023.

Defendant's optional reply brief is due _____, 2023.

DATED this _____ day of September, 2023.

DAVID G. ESTUDILLO
United States District Judge